REMARKS

Applicants wish to thank the Examiner for reviewing the present patent application.

I. Rejection Under Obviousness-Type Double Patenting

The Examiner has provisionally rejected claims 1-12 and 15-20 under the judicially created Doctrine of Obviousness-type Double Patenting. In the rejection, the Examiner mentions, in summary, that the claims of the present application are unpatentable over claims 1, 3-9 and 11-13 of co-pending application 10/841,867. The Examiner mentions that the conflicting claims are not identical, but believes that the claims are not patentably distinct from each other. While Applicants disagree, a terminal disclaimer is filed herewith in compliance with 37 CFR §1.321(c). The terminal disclaimer is being filed so that the prosecution in the present patent application may be expedited and so that Applicants can further business objectives. In view of the same, it is respectfully requested that the obviousness-type double patenting rejection be withdrawn and rendered moot.

II. Rejection Under Obviousness-Type Double Patenting

The Examiner has provisionally rejected claims 1-12 and 15-20 under the judicially created Doctrine of Obviousness-Type Double Patenting and alleges that the claims are unpatentable over claims 1-13 of co-pending application 10/841,042. The Examiner mentions that the claims are not identical yet believes that they are not patentably distinct from each other. While Applicants respectfully disagree, provided herewith is a terminal disclaimer in compliance with 37 CFR §1.312(c). This terminal disclaimer is being filed in order to expedite the prosecution of the present patent application and to

further business objectives. In view of the same, it is respectfully requested that the obviousness-type double patenting rejection be withdrawn and rendered moot.

III. Rejection Under 35USC §103

The Examiner has rejected claims 1-9, 11-13 and 15-20 under 35 USC §103 as being unpatentable over Cohen et al., U.S. Patent Application No. 2004/0120908 (hereinafter, '908). In the rejection, the Examiner mentions, in summary, that the '908 reference teaches transparent sealing cosmetic compositions containing non-interference platelet particles having an average particle size of 25 microns or less. The Examiner further mentions that the platelet particles can include bismuth oxychloride particles. The Examiner continues by mentioning that the composition described in the '908 reference may be used for any type of cosmetic product, like a color cosmetic or a cosmetic treatment product. Finally, the Examiner mentions that the compositions described in the '908 reference can include standard optional additives, like anti-oxidants and vitamins, and that the presently claimed opacity of less than 20% is inherent in the '908 reference because the reference describes transparent compositions. In view of this, the Examiner believes that the obviousness rejection is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicant's position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

The present invention, as set forth in independent claim 1, is directed to a skin care or cleaning composition comprising from about 0.01% to about 1% by weight of solid single-crystal, flat, platy particles, the particles having an index refraction from about

1.8 to about 2.2; and a cosmetically acceptable vehicle, wherein the composition has an opacity of less than about 20%.

The invention of claim 1 is further defined by the dependent claims, which claim, among other things, that the opacity can be less than 10%, that the platy particles can include bismuth oxy-chloride, aluminum oxide, zirconium oxide, boron nitride, crystals of solid phase solutions, or mixtures thereof, specific platy particle diameters, that the composition can be leave on or wash off, and specific amounts of platy particles within the composition. Still further, the claimed invention, as described in independent claim 1, is further characterized as one comprising a skin benefit agent, wherein the skin benefit agent can be a retinoid, essential fatty acid, alpha hydroxy acid, beta hydroxy acid, polyhydroxy acid, skin lightening agent or mixtures thereof. Even further, the presently claimed invention is directed to a method for imparting a radiant skin appearance by applying the composition of claim 1 to the skin.

Independent claim 16 is directed to a skin care composition consisting essentially of about 0.01% to about 1% by weight of solid single-crystal, flat, platy particles, the particles having an index of refraction of about 1.8 to about 2.2; and a cosmetically acceptable vehicle wherein the composition has an opacity of less than about 20% and further wherein the composition is non-pigmented or colorless. The invention of claim 16 is further defined by the dependent claims which claim, among other things, the type of platy particles that may be employed, and the size of the platy particles.

In contrast, the '908 reference is merely directed to a topical composition for applying to the skin wherein the topical composition comprises a transparent component and a non-interference platelet component that exhibits a light transmission value from about

20% to about 70%. (Please see paragraph 0005). Moreover, the second component, i.e., the platelet component, is a platy material that provides a continuous sheetlight, reflective finish rather than a sparkling, discontinuous shine. The '908 reference teaches away from the presently claimed invention since the presently claimed invention is directed to a composition having an opacity of less than about 20%, and therefore, a light transmission value of 80% or more (achieved by using single-crystals with smooth crystal reflective facets as defined in the specification at page 6). Note that the transmission values of the composition described in the '908 reference are no greater than 70%. Moreover, in paragraph 0016 of the '908 reference, it is taught that the ingredients used in the formula should in combination exhibit a light transmission value from 20-70%. Furthermore, the particles employed in the presently claimed invention have an index of refraction of about 1.8 to about 2.2. These particles are single-crystal, flat, platy particles. No such requirements are even remotely suggested or required in the compositions described in the '908 reference.

As set forth in paragraph 008 of the '908 reference, the compositions described are base compositions for any type of cosmetic product that can have color or treatment agents. The presently claimed composition is an end use composition to be used to enhance skin radiance, yielding to the consumer a natural skin finish. It is not a base/filler composition.

In view of the above, it is clear that all the important and critical limitations set forth in the presently claimed invention are not found in the '908 reference. Therefore, the obviousness rejection should be withdrawn and rendered moot.

IV. Rejection Under 35 USC §103

The Examiner has rejected claim 10 under 35 USC §103 as being unpatentable over Cohen et al., U.S. Patent Application No. 2004/0120908 (hereinafter, '908) in view of Dreher, U.S. Patent Application No. 2003/0157041 (hereinafter, '041) or Miyazaki et al., U.S. Patent No. 6,482,419 (hereinafter, '419). In the rejection, the Examiner mentions, in summary, that the '908 reference is being applied as above. The Examiner admits that the '908 reference does not explicitly teach a particle suspended in a polar solvent prior to incorporation into the composition. Nevertheless, the Examiner attempts to "cure" the vast deficiencies of the '908 reference by relying on the '041 reference for mentioning the use of butylene glycol as a polar solvent. Moreover, the Examiner relies on the '419 reference for also mentioning the use of butylene glycol as a polar solvent when making a cosmetic composition. In view of this, the Examiner believes that the obviousness rejection to claim 10 is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicant's position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record, the presently claimed invention is directed to a superior skin care or cleaning composition having about 0.01% to about 1% by weight of solid single-crystal, flat, platy particles wherein the particles have an index or refraction from about 1.8 to about 2.2. The composition further comprises a cosmetically acceptable vehicle and the composition has an opacity of less than about 20% (i.e., a transmission value of 80% or more). The invention is further defined by dependent claim 10 which

claims, among other things, that the platy particles are suspended in a polar solvent prior to incorporation into the composition.

In contrast, and as already made of record, the '908 reference teaches away from the presently claimed invention since the same is a base for cosmetic products whereby the composition exhibits a light transmission value in the range of from about 20 to about 70% (i.e., an opacity from about 30 to about 80%). Furthermore, and as already made of record, the '908 reference teaches away from the presently claimed invention since it does not describe the use of single-crystal, flat platy particles having an index of refraction from about 1.8 to about 2.2. In fact, in paragraph 0010 of the '908 reference, platy materials that provide a continuous sheet-like reflective finish are described.

Neither the '041 reference nor the '419 reference "cure" any of the vast deficiencies of the '908 reference. This is true because the '041 reference is merely directed to a make-up composition having an interference pigment with a blue or violet reflectance. Turning to the '419 reference, the same is directed to an inorganic composite powder wherein the refractive index of inorganic oxide used for forming the utmost outer layer is 1.73 or less. Clearly, none of the teachings of the secondary references even remotely cure the vast deficiencies of the '908 reference. Therefore, Applicant respectfully submits that a *prima facie* case of obviousness has not been established and that the rejection made under 35 USC §103 should be withdrawn and rendered moot.

V. Rejection Under 35 USC §103

The Examiner has rejected claims 13 and 14 under 35 USC §103 as being unpatentable over Cohen et al., U.S. Patent Application No. 2004/0120908 (hereinafter, '908) in view of Tan et al., U.S. Patent No. 6,511,672 (hereinafter '672).

In the rejection, the Examiner mentions, in summary, that the '908 reference is applied as above. The Examiner continues by mentioning that the '908 reference doesn't explicitly teach the use of specific benefit agents as claimed. Nevertheless, the Examiner attempts to "cure" the vast deficiencies of the '908 reference by relying on the '672 reference which mentions the use of additives like vitamin A, retinol, vitamin C, hydroxy acids and the like. In view of this, the Examiner believes that claims 13 and 14 are properly rejected under 35 USC §103.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicant's position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record, the present invention, as set forth in independent claim 1, is directed to a skin care or cleansing composition with 0.1 to 1% by weight of a solid single-crystal, flat, platy particle, the particle having an index of refraction from about 1.8 to about 2.2 and a cosmetically acceptable vehicle wherein the composition has an opacity of less than about 20% (i.e., a transmission value of 80% or more). The invention of claim 1 is further defined by the dependent claims which claim, among other things, the types of skin benefit agents that may be employed (e.g., retinoids,

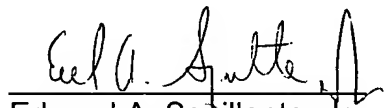
fatty acids, hydroxy acids, skin lightening agents, retinol, linoleic acid, glycolic acid, lactic acid, hydroxy octanoic acid, salicylic acid, ferulic acid, sebacic acid or the like).

In contrast, and as already made of record, the '908 reference does not, even remotely, describe a composition having single-crystal, flat, platy particles with an index of refraction as claimed. Moreover, the '908 reference does not describe a skin care or cleaning composition having an opacity of less than about 20%. Again, the '908 reference is directed to a composition having a transmission value of 20-70% , and therefore, an opacity of 30-80%. The composition of the '908 refrence also describes the use of platy materials that provide a continuous sheet-like reflective finish and not single-crystals as claimed. Again, none of the important and critical limitations set forth in the presently claimed invention are taught or suggested in the '908 reference. The '672 reference, on the other hand, does not "cure" any of the vast deficiencies of the '908 reference since the '672 reference only describes a composition having a pigment with a first platelet of alumina treated with a metal oxide and blended with at least one second platelet treated with at least one spherical scattering component. None of the vast deficiencies of the '908 reference are even remotely cured by the '672 reference. In view of this, Applicant respectfully requests that the obviousness rejection be withdrawn and rendered moot.

Applicants respectfully submit that all claims of record are now in condition for allowance. Reconsideration and favorable action are earnestly solicited.

In the event the Examiner has any questions concerning the present patent application, the Examiner is kindly invited to contact the undersigned at her earliest convenience.

Respectfully submitted,



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